

Psychiatric Disability Consultants, Inc.

To: Todd Ditmar
From: Janet Beattie, Consultant, PDC INC.
Re: Christopher Kearney
Date: April 25, 1998

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On April 25, 1998 I met with Mr. Kearney and his treating psychologist, Dr. Donna Judd at a conference room at the Marriott Hotel in Columbus, Ohio. Dr. Judd was present for an hour and a half of the meeting and Mr. Kearney and I met for two hours more for a total of 3.5 hours.

Mr. Kearney is a 45 year old male who has been receiving disability benefits from Jefferson Pilot since 2/8/93 due to a continuing psychiatric impairment that has limited his ability to perform his occupation on a full-time basis. Mr. Kearney is of average height and weight. At our meeting he was dressed casually in blue jeans and a short sleeve sport shirt. He was clean shaven with no glasses. He brought with him a file box containing all correspondence and his disability policies with Jefferson Pilot. Mr. Kearney maintained good eye contact and was very involved in the discussion during the duration of our meeting.

Dr. Judd explained that she is currently maintaining a limited private practice as she works with the state prison system on a full-time basis. She works out of a MD's office in the Columbus area. Prior to moving to the Columbus area she had seen Mr. Kearney and his ex-wife in therapy in Cleveland.

Approximately a year after his divorce had been finalized Mr. Kearney contacted Dr. Judd for individual treatment. She is currently seeing him twice a month with telephone contact in-between as needed. She related that when she first saw Mr. Kearney with his now ex-wife he presented as "frightened". She stated that his ex-wife was very depressed and he had come in with her for counseling. She also met with his two step daughters from this marriage.

She stated that this was a very difficult divorce process. Mr. Kearney and his ex-wife were married for 14 years. She was older than Mr. Kearney and came into the marriage with two daughters from a previous relationship that he cared for and assisted with their college expenses. He currently has no contact with them.

When he first presented to her in individual therapy she thought that this would be "a typical depression case". She reports now that this hasn't been the case. She views Mr. Kearney as having been depressed all of his life and has at times exhibited serious depression. The result of this is an inability on his part to develop appropriate interpersonal relationships with women and his peers. There is a family history of depression with one of his sisters and one of his brothers. He comes from a family of 11 children. His family lives in northern Ohio. He reports they are supportive of him. His father died approximately one year ago.

Dr. Judd stated that she has two different pictures of him; one of an individual who is very self assured and another who can't maintain a relationship. He stated that he has dated frequently since his divorce. His outlet for meeting women is line dancing in country western bars.

Dr. Judd stated that Mr. Kearney has been worse over the last 8-9 months. He has been less able to manage financially, with several nonsufficient checks written to her, and he has expressed concerns about his ability to pay his mortgage. She has also seen more of a tendency toward paranoia and explosive behavior. She also stated several times during our meeting that she is concerned and not yet convinced that there is not an ongoing addiction problem that Mr. Kearney is not dealing with. She doesn't currently view him as able to make it in a sales environment. He hasn't been able to maintain relationships in his work as he blows up. He has experienced suicidal ideation over the last year, but not as an overriding issue. His affect is down and he reports sleeping during the daytime on a regular basis.

He is currently taking the medication Effexor, prescribed by his family physician, Dr. Lehenbauer. He states he was prescribed 150 mgs. per day, but this has been keeping him awake. I understood that he is currently taking a lesser amount than this, but I am not clear of the dosage. He is also taking Xanax as needed. He reported that he had taken .5 mg today before this meeting and had been taking it over the past several days. He reported that

this helps with his anxiety. It appears he was taking this medication when he initially came to see Dr. Judd. I am unclear how long prior to this he has been taking this medication. He also takes Metabo for energy. He reports that the Effexor helps him to function and without it he wouldn't get out of bed, but it also puts an edge on him. He told me that he has taken Paxil, Prozac and other medications for his depression over the years, all prescribed by Dr. Lehenbaur. Dr. Judd also reported that during periods of his treatment with her he has stopped his medication on his own. She stated that he needed the medication to function. It appeared Mr. Kearney agreed with this statement.

She has diagnosed him with Major Depression and stated if she was going to add an Axis II to the diagnosis it would probably be dependency. Approximately two years ago she thought he was turning the corner and would be able to return to work in his occupation, but this did not pan out. She has utilized cognitive, rational emotive, and paradoxical therapy as well as other behavioral approaches during the time she has worked with Mr. Kearney. She has also used a lot of workbooks on self affirmation with him. Her next steps are to utilize a motivational/self responsibility approach but she also stated that she needs to have some answers about her concerns regarding a possible addiction problem. She feels he needs to be empowered, in charge, and experience a feeling of success. She will be encouraging him to take some action, definite steps toward his future. She feels he can be successful again.

Dr. Judd was very forthright in her discussion with me and Mr. Kearney. At the conclusion of our conversation I explained that one of my recommendations to Jefferson Pilot would be for Mr. Kearney to be seen by a psychiatrist for a consult. Also if he is returning to work on a full-time basis it might be appropriate to see him weekly or at least schedule a telephone call on the weeks she doesn't see him face to face. She stated that she would be agreeable to these recommendations. I also asked if she would be available to speak with me. She turned this question over to Mr. Kearney for his response. He was reluctant to give Dr. Judd his okay on this, but eventually did. In regards to billing for her time, she will send the bill to Mr. Kearney who will forward it to Jefferson Pilot. As I stated earlier, Dr. Judd met with us for an hour and a half.

During the initial part of the meeting with Dr. Judd Mr. Kearney was also very active in the conversation. He related that his depression started

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simultaneously with his back surgery in 1993. He stated that he spoke with his insurance agent in 1993 about filing for disability benefits, and was told to file for his back, however, he also stated that he was experiencing depression at the same time. After he had the back surgery his pain was alleviated but he continued to remain depressed and unable to perform his occupation on a full-time basis. He also reported that initially it took 3-4 months for Jefferson Pilot to provide him with disability benefits. At the time he applied for benefits his business was down as he was unable, due to his depression, to get as many new leads or make as many calls as he usually did. "His mind was not oriented toward productivity".

Over the last five years he has tried to keep his business going and has hired other people to help him with it. Recently, he told his accountant that he will not be drawing a salary for the business, Kearney Associates, and is considering dissolving or just leaving the business dormant. He told me that he is struggling to keep his house. He has sold his boat and also some real estate. He currently lives alone with his dog. Dr. Judd stated that she has been to his home and it is a very pleasant sunny atmosphere. Very clean and neat.

In regards to his daily activities Mr. Kearney stated that he is a morning person. When he gets up in the morning he will take his dog for a walk. When he gets back from his walk he will have breakfast and usually start work by 9:00. His office is in his home and he will usually work until 12:00, eat lunch then after lunch take a nap for 1-2 hours. He stated that this helps him feel better and sometimes he then can work a little more after he wakes up. He didn't talk about other activities except that he is thinking about taking up golf.

He reports that his treatment with Dr. Judd has helped him and pointed out that due to this treatment he has been able to avoid several unfavorable relationships. He has also been in treatment with 3-4 other psychologists during this time frame. He told me that approximately a year ago he had problems controlling his anger and actually beat a colleague up who had "come in the back door" with an offer to a customer of his. He told me he "hit him until his hands hurt". He stated that he wasn't sorry that he did this, that this man deserved this and it felt good to do this. He recently heard that this incident might develop into a civil suit. (Dr. Judd also mentioned that there had been a physical issue with his current girlfriend.) He feels that the

business isn't what it use to be, their is a lot of "bullshit" and people are out to cheat him. He has become disillusioned with the sales business and the people after this incident.

He needs more control of the situation and would have this in the new business he is developing. He doesn't feel he could go into business with someone else after working for himself for 23 years. He also sees the amount of travel that he has done in the past as an issue. He wants to have a normal social life, not traveling all of the time. He mentioned several times that he is not worried or concerned about making the amount of money he did previously. His new company is Kenwood Technology Group, which currently consists of Mr. Kearney and several engineers who are retained on a consulting basis. The concept of the business is to bid on projects/systems that manufacturers need in-house that would require building a new tool using robotics or automation. He has started to contact engineers at several business' to find out what type of projects they will need to have built. Then he will work with one of his engineers to develop the systems, determine the equipment needed to do the job, if it can be bought off the shelf or needs to be made from scratch, and what type of robotics and tooling is needed. He feels he can be competitive initially as he doesn't have the overhead that other companies in this type of work might have. Once he gets a project then he will decide if he can build it in his garage or rent a place to do it, then he will be able to start hiring and project the business needs.

He reported when asked about the differences he sees in this type of business VS being a sales representative that he will have more control of the product, control of the customer, and control of his territory. He won't be "kissing butt", won't have the principle in there after he has made the sales, and no one will be telling him who to sell to. As an example he stated that a principle he works for might "be on him" to sell their product to General Motors or Ford, when he knows that they have consolidated there vendors and it is a waste of his time to pursue this. He currently has several proposals out for bid. He will need to take classes in accounting and CAD at a local university in order to fully develop this business.

I spoke with Mr. Kearney about putting together a business plan to submit to Jefferson Pilot and also for himself, to develop a direction. We talked about how long it might take him to know that this was a viable business. He was hopeful that he would know in 6 months, but really thinks it will probably

take a year. We discussed the different alternatives of payment with Jefferson Pilot, such as claim settlement and policy settlement.

I introduced the five year any occupation contract issue with Mr. Kearney while Dr. Judd was available. Mr. Kearney is of the belief that if he stops working as a manufactures representative now he will be considered totally disabled from his own occupation and if he remains impaired in his ability to perform his own occupation over the next five years that he should continue to receive full disability benefits from Jefferson Pilot. We discussed the similarities between his current occupation and the occupation he is pursuing. He views these as totally different occupations. In the new occupation he sees that he will need the skills of buying equipment and accounting. We also discussed and reviewed the residual policy as well as the definition for "disability" on both of his policies. He is of the belief that both of his policies are lifetime benefits. He feels in starting a new occupation that he is giving Jefferson Pilot a ^{kick} ~~brake~~ on his benefits, in that he could continue to try to develop his sales business on a residual disability and "no one could force him to do otherwise." He is of the belief that he has five more years of benefits on one policy for his own occupation after he becomes totally disabled, and another five years on his other policy under the own occupation clause. We discussed who would determine total disability and that this is normally a medical/occupational decision and what that would mean if he decided he was totally disabled from his occupation but then started another business. We were not able to come to any agreement on these issues and I encouraged Mr. Kearney to seek the advice of an attorney for clarification on these issues.

I felt that my meeting with Mr. Kearney and Dr. Judd was very productive. It was unfortunate that at the conclusion of our conversation Mr. Kearney left without concluding our conversation. We did not discuss his current business or the outstanding questions we have regarding his expenses, clients, etc.

Summary and Recommendations

Mr. Kearney has now been receiving disability benefits from Jefferson Pilot for 5 years. During this time frame he reports that he has continued to work in his business, Kearney Associates, as a manufacturers representative. He stated in our meeting that he had hoped that he would have been able to build this business back up. Currently he reports that he does not see a future for

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himself in this business and is looking to pursue another line of work which has been described in the body of this memo.

Dr. Judd reported that she is encouraging Mr. Kearney to pursue other work and is hopeful that he will be successful. She has two concerns that she feels are immediate to work with Mr. Kearney on: building and developing relationships and determining if he has an ongoing addiction problem.

Mr. Kearney believes that he is eligible for five more years of benefits under the "own occupation" clause of his policy as he has never been totally disabled from his occupation. There are also other policy issues that need to be clarified for Mr. Kearney.

Following are my recommendations:

- Request that Jefferson Pilot provide Mr. Kearney with a written explanation of his policy benefits to include own occupation, occupational definition and explanation, length of his benefits, an explanation of how they view residual Vs total disability and how this decision is made.
- Request that Mr. Kearney be seen by a Psychiatrist for a consult on his medication. There is some concern regarding his statements that he has an "edge" from the current medication, as well as being sleepy from the full dosage of Effexor that has been prescribed.
- Upon completion of the above, another discussion will need to take place with Mr. Kearney regarding his current activities and how these are viewed in regards to his continuing disability benefits.

Thank you for the opportunity to be involved in this claim. If I can be of further assistance, please contact me. I will be forwarding a copy of this memo to Mr. Kearney and Dr. Judd.

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